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TITLE:

Promulgation of Regulations and Compliance with the Requirements of the California Environmental Quality Act (CEQA)

AFFECTED
PARTIES:

All Department program areas developing regulations
Office of Policy & Environmental Analysis
Office of Legal Counsel and Criminal Investigation
Public Participation Branch

This policy and procedure memorandum relates to the implementation of requirements of the California Environmental Quality Act (CEQA), Public Resources Code 21000 et seq.

PURPOSE:

The development of a regulation or set of regulations under the rulemaking process constitutes a "project" as defined by CEQA Guidelines (Section 15378 of Title 14 of the California Code of Regulations). As such, this memorandum sets forth specific policy and procedures for all Department program staff responsible for developing regulations under the rulemaking process in order to comply with the procedural requirements of CEQA as established by Department policy (Office Policy and Procedure Document #EO-93-001).

PROCEDURES/ RESPONSIBILITIES:

The CEQA process for regulation development must begin when the Department management instructs staff to formally initiate the rulemaking process.

STEP 1.

Compliance Strategy. The regulation writer shall contact the Planning and Environmental Analysis Section (PEAS) providing notification of the initiation of the rulemaking process for the project and arrange a personal meeting or telephone conference call to discuss a compliance strategy.

The regulation writer in consultation with PEAS shall determine if a CEQA statutory or categorical exemption is applicable. During this compliance strategy, the Lead Agency and Responsible and Trustee Agencies shall be determined. NOTE: The Department

will virtually always be the Lead Agency when developing its own regulations.

Exemption. If the project is exempt from CEQA, the regulation writer shall prepare a Notice of Exemption (NOE) and forward the NOE to PEAS for review. Upon approval, PEAS will file the NOE with the State Clearinghouse. The regulation writer shall forward a copy of the approved NOE to the Department's Office of Regulations.

A thirty-five (35) day statute of limitations commences with the filing of the NOE with the State Clearinghouse. If the NOE is not challenged, no additional environmental assessment is needed for the project.

It is the policy of the Department, for regulations related to the maintenance of the Resource Conservation and Recovery Act (RCRA) authorization, that the Department will consider the project to be exempt if the regulation(s) substantially mirrors a previously promulgated federal regulation(s). Department adoption of the regulation(s) into Title 22 of the California Code of Regulations (CCR) would not pose an environmental impact since the federal regulation(s) would apply regardless of the Department's action. However, if the Department makes a substantive modification or addition to the regulation(s), an exemption is not appropriate.

STEP 2.

Initial Study. If the project is not exempt, the regulation writer shall conduct and prepare findings for an Initial Study of the project. The Initial Study will determine whether a Negative Declaration (NEG DEC) or an Environmental Impact Report (EIR) is required to be prepared for the project.

NEG DEC. If it is determined that a NEG DEC is required for the project, the regulation writer shall submit the completed Initial Study and the proposed draft NEG DEC to PEAS for review and approval. PEAS shall ensure that copies are sent to the State Clearinghouse for distribution to Responsible and Trustee Agencies.

At least ten (10) working days must be provided PEAS for the review of a proposed draft NEG DEC.

EIR. If it is determined that an EIR is required, the regulation writer shall immediately submit the completed Initial Study and a Notice of Preparation (NOP) to do an EIR to PEAS for its review and approval. PEAS shall ensure that copies are sent to the State Clearinghouse for distribution to Responsible and Trustee Agencies.

At least ten (10) working days must be provided PEAS for the review of an Initial Study and NOP.

STEP 3.

Public Notice/Public Review. *It is the policy of the Department that the regulation writer consult with the Department's Public Participation Branch to determine if the project is controversial or if there seems to be a high degree of public interest involving the project which needs to be addressed. In certain situations a public meeting and additional written/oral communications with the public may be advisable.*

NEG DEC. If it is determined that a NEG DEC is warranted for the project, the regulation writer shall:

- a) prepare and issue a public notice announcing the availability of the Initial Study and draft NEG DEC and requesting public comment for a thirty (30) day period; and
- b) respond to public comments, amend the draft NEG DEC as necessary, and finalize the NEG DEC.

PEAS shall submit copies of the Initial Study and draft NEG DEC to the State Clearinghouse for review by the Responsible and Trustee Agencies.

EIR. If it is determined that an EIR is warranted for the project, the regulation writer shall:

- a) prepare an NOP and submit it along with the Initial Study to PEAS for review and approval (PEAS shall ensure that copies are sent to the State Clearinghouse for distribution to Responsible and Trustee Agencies;
- b) consult with any Responsible or Trustee Agencies, as necessary;
- c) scope the needs of the EIR and consult with the public;
- d) initiate the preparation of the draft EIR;
- e) prepare a Notice of Completion (NOC) and provide copies of the draft EIR and NOC to PEAS for review prior to submittal to the State Clearinghouse; and
- f) prepare and issue a public notice announcing the availability of the draft EIR and to solicit public comments on the draft EIR.

STEP 4.

Decision Making and Approvals. The regulation writer shall submit the final draft of either the NEG DEC or EIR to his or her program Deputy Director, or authorized designee, for approval and signature upon completion of the following:

- a) the public review period;
- b) the Department's response to comments; and
- c) any amendment of the environmental document.

NEG DEC. For a NEG DEC, the regulation writer shall prepare and submit to PEAS a Notice of Determination (NOD). The NOD should be submitted to PEAS prior to the rulemaking process public review period.

PEAS will file the NEG DEC and NOD with the Governor's Office of Planning and Research (OPR). This filing shall commence a thirty (30) day statute of limitations with respect to challenging the NEG DEC.

If the NEG DEC is not challenged during the CEQA process review and the proposed regulation remains substantially unchallenged during the rulemaking process public review, no further CEQA compliance is necessary.

If the NEG DEC is challenged under the CEQA process or the rulemaking file is substantially changed as a result of public comment, then the Initial Study will need to be re-evaluated and either reused or modified. If the Initial Study is revised or modified, it will be necessary to re-evaluate and determine whether the NEG DEC is still appropriate or if an EIR is now required.

EIR. For an EIR, the regulation writer shall also prepare the following:

- a) findings for any significant environmental effects of the project;
- b) mitigation reporting or monitoring program (if applicable);
- c) statements of overriding considerations (if applicable);
- d) an NOD for the EIR; and
- e) a certification of the EIR.

The regulation writer shall submit items a) through e) as listed above along with the final

EIR to his or her program Deputy Director, or authorized designee, for approval and signature.

The completed CEQA package of documents is then routed to PEAS for final CEQA review. If the package is complete and satisfactory, PEAS will then forward the CEQA documents, except for the NOD, to the Department's Office of Regulations which will compile it with the rulemaking file which is sent to the Office of Administrative Law for final review and approval.

After the final rulemaking file has been submitted to the Secretary of State and the Department receives notification that it has been duly received and accepted by the Secretary of State, the regulation writer will immediately forward a copy of this notification to PEAS. This will signal PEAS to file the NOD with OPR.

The filing of the NOD for the EIR commences a thirty (30) day statute of limitations for challenging the EIR. If the EIR is not challenged during that period, the EIR process will be completed and no further CEQA compliance will be necessary for the project.

IMPLEMENTATION:

All Department programs shall implement the procedures contained herein in continuance of efforts by the Department in achieving procedural compliance with the requirements of CEQA. Additional assistance concerning this memorandum, CEQA procedure or any necessary forms may be obtained by contacting PEAS at 322-8162 or CALNET 492-8162.

CONTACT:

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Original Signed By:
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October 4, 1993

Date

William F. Soo Hoo, Director